IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 847 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHESHKUMAR MANILAL THAKER

Versus

SHYAMLAL SHIHOMAL MAHERCHANDANI

Appearance:

1. First Appeal No. 847 of 1986

MR SANDIP C SHAH for Petitioner No. 1

MISS KALPANA R SHAH for Respondent No. 1

MR RAJNI H MEHTA for Respondent No. 2,5

NOTICE SERVED for Respondent No. 3

MR NAGIN N GANDHI for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 01/04/2004

ORAL JUDGEMENT

1. Appellant, original claimant of M.A.C.P. No.143 of 1984, by filing this appeal under Section 110-D of the Motor Vehicles Act, 1939, has questioned the correctness of judgment and award dated February 12, 1986, passed by the Motor Accident Claims Tribunal (Main-III), Ahmedabad, in M.A.C.P. No.143 of 1984.

2. The appellant had sustained injuries in a vehicular accident on April 11, 1984, at around 3.30 p.m. when he was walking on the left side of the road and proceeding towards Kalupur bus terminus. At that time, motor car No.GJF 7982 came from his back, which was driven in rash and negligent manner, and the driver of the car, without blowing horn, had dashed with the appellant as a result the appellant was thrown below the body of the motor truck No.GRT 4050 which was parked in the middle of the road. The front portion of the car had, thereafter, dashed with the back portion of the truck.

3. The appellant, in the said vehicular accident, had sustained compound fracture of tibia/fibula of right side, compression fracture L3 vertebra and shortening of right lower limb by 1". Orthopaedic Surgeon, Dr. Mukesh Shah, had assessed permanent partial disability suffered by the appellant at 28.5%.

4. The Tribunal, after taking into consideration oral as well as documentary evidence, had awarded Rs.63,000/- with interest at the rate of 6% with proportionate costs, as against the claim of Rs.75,000/made by the appellant. The Tribunal had exonerated the driver, the owner and the Insurance Company, namely, Oriental Insurance Company, with whom the motor truck was insured. The appellant has filed this appeal for enhancement of compensation claiming additional compensation of Rs.12,000/- in the present appeal.

5. The learned advocate for the appellant has taken me through the entire record and proceedings of the appeal. It is contended that, though the Orthopaedic Surgeon, Dr. Mukesh Shah, had assessed permanent partial disability suffered by the appellant at 28.5%, the Tribunal has awarded less compensation under the head of future loss of income by taking into consideration a lumpsum figure of Rs.200/- per month and, therefore, the compensation under the head of future loss of income deserves to be enhanced.

6. It be stated that the Tribunal has assessed the monthly income of the appellant at Rs.1000/- while determining the actual loss of income of the appellant, but the appellant had produced salary slips at Exh.90 and Exh.91 showing monthly income of Rs.829.82 ps, which is rounded off at Rs.830/- per month. Taking into consideration the 28.5% permanent partial disability suffered by the appellant, monthly loss of income of the appellant in future would be Rs.237, which is multiplied by 12, i.e. Rs.2844/- will be the yearly loss which would be suffered by the appellant due to his permanent partial disability. Multiplier of 15 adopted by the Tribunal is quite just and proper. Applying the multiplier of 15 to the yearly figure of Rs.2844/-, the compensation to be awarded to the appellant under the head of future loss of income would come to Rs.42,660/-. The Tribunal has already awarded Rs.36,000/- under the head of future loss of income. The appellant is, therefore, entitled to receive additional compensation of Rs.6,660/- (Rs.42,660 minus Rs.36,000) with interest at the rate of Rs.6% from the date of the application till realization. Except the abovereferred to additional claim, no other claim is made by the appellant in this appeal. Hence, the rest of the compensation awarded by the Tribunal under various other heads is hereby confirmed.

7. As a result of foregoing reasons, this appeal is partly allowed. The appellant is awarded additional compensation of Rs.6,660/- (Rupees six thousand six hundred sixty only) with interest at the rate of 6% per annum from the date of the application till realization with proportionate costs. The judgment and award dated February 12, 1986, passed by the Motor Accident Claims Tribunal (Main-III), Ahmedabad, in M.A.C.P. No.143 of 1984, is modified suitably.

(M.H. Kadri, J.)

(swamy)